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OFFICE OF PETITIONS

In re Application of :
Kozicki et al. : DECISION ON PETITION
Application No. 10/796,808 :
Filed: March 8, 2004 :
Atty Docket No. 29089.4300 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 C.F.R. 1.182," filed December 27, 2005, which is properly treated as a renewed petition under 37 CFR 1.78(a)(6). Applicants petition for acceptance of the priority claim of the present application to Provisional Application Serial No. 60/452,648.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of a prior filed provisional application, is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5), and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the surcharge set forth in 37 CFR 1.17(t);
- (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5) and the date the claim was filed was unintentional; and

(3) the reference to the prior filed provisional application, supplied in an application data sheet (ADS) (37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. See 35 USC 119(e) and 37 CFR 1.78(a)(5). The Director may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on March 8, 2004, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5). The initial petition included the required surcharge and the required statement of unintentional delay. Moreover, the present application was filed on Monday, March 8, 2004, within twelve months¹ of the filing date of the prior provisional application, Application No. 60/452,648, which was filed on March 7, 2003, and for which priority is claimed. A reference to the prior provisional application has been included as an amendment to the first sentence of the specification following the title.

However, the petition was dismissed because the amendment was not acceptable. Submission of a proper reference, including proper identification of the intermediate applications, was required.

On instant request for reconsideration, applicants submitted an amendment to correct this deficiency. The amendment has been reviewed and found acceptable.

Accordingly, now having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 119(e) to the prior-filed provisional application satisfies the conditions of 37 CFR 1.78(a)(6), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In

¹ 37 CFR 1.7(b) provides that: If the day that is twelve months after the filing date of a provisional application under 35 U.S.C. 111(b) and § 1.53(c) falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the period of pendency shall be extended to the next succeeding secular or business day, which is not a Saturday, Sunday, or a Federal holiday.

order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 119 and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider these benefit claims and determine whether the instant application is entitled to the benefit of the earlier filing date.

This application is being forwarded to Technology Center Art Unit 2823 for consideration by the Examiner of applicant's claim under 35 U.S.C. § 119, and 37 CFR 1.78(a)(5) and (6) for the benefit of priority to the prior-filed application.

Telephone inquiries concerning this matter should be directed to Senior Petitions Attorney Nancy Johnson at (571) 272-3219.



Frances Hicks
Petitions Examiner
Office of Petitions

Enclosure: Corrected Filing Receipt